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**UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA**

-oOo-

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWARD MARCOS MELENDEZ,

Defendant.

Case No.: 2:15-cr-280-RCJ-PAL

**PLEA AGREEMENT UNDER  
 FED.R.CRIM.P.11(c)(1)(A) and (B)**

Plaintiff United States of America, by and through DANIEL G. BOGDEN, United States Attorney, and Kathryn C. Newman, Assistant United States Attorney, the defendant EDWARD MARCOS MELENDEZ, and the defendant's attorney, William Carrico, Assistant Federal Public Defender, submit this Plea Agreement under Fed. R. Crim. P. 11(c)(1)(A) and (B).

**I. SCOPE OF AGREEMENT**

The parties to this Plea Agreement are the United States of America and EDWARD MARCOS MELENDEZ, the defendant. This Plea Agreement binds the defendant and the United States Attorney's Office for the District of Nevada. It does not bind any other prosecuting, administrative, or regulatory authority, the United States Probation Office, or the Court.

1 The Plea Agreement sets forth the parties' agreement regarding criminal charge  
2 referenced in the Plea Agreement and applicable sentences and fines. It does not control or  
3 prohibit the United States or any agency or third party from seeking any other civil or  
4 administrative remedies directly or indirectly against the defendant.

5 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**

6 A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead guilty to a  
7 Superseding Criminal Information charging him with Misprision of Felony in violation of Title  
8 18, United States Code, Section 4.

9 B. Waiver of Trial Rights. The defendant acknowledges that he has been advised and  
10 understands that by entering a plea of guilty he is waiving -- that is, giving up -- certain rights  
11 guaranteed to all defendants by the laws and the Constitution of the United States. Specifically,  
12 the defendant is giving up:

13 1. The right to proceed to trial by jury on all charges, or to a trial by judge if  
14 the defendant and the United States both agree;

15 2. The right to confront the witnesses against the defendant at such a trial, and  
16 to cross-examine them;

17 3. The right to remain silent at such a trial, with assurance that his silence  
18 could not be used against him in any way;

19 4. The right to testify in his own defense at such a trial if he so chooses;

20 5. The right to compel witnesses to appear at such a trial and testify in the  
21 defendant's behalf;

22 6. The right to have the assistance of an attorney at all stages of such  
23 proceedings; and

24 7. The right to be indicted by a grand jury on this charge.

1 C. Withdrawal of Guilty Plea. The defendant will not seek to withdraw his guilty  
2 plea after he has entered them in court.

3 D. Additional Charges. The United States agrees not to bring any additional charges  
4 against the defendant arising out of the investigation in the District of Nevada which culminated  
5 in this Plea Agreement and based on conduct known to the United States. The United States will  
6 move to dismiss the Criminal Indictment in this case as to this defendant at sentencing.

7 **III. ELEMENTS OF THE OFFENSES**

8 The elements of Misprision of Felony under 18 U.S.C. § 4 are:

9 First, a federal felony was committed, as alleged in Counts One and Three of the  
10 Indictment;

11 Second, the defendant had knowledge of the commission of that felony;

12 Third, the defendant failed to notify an authority as soon as possible. An “authority  
13 includes a federal judge or some other federal civil or military authority, such as a federal grand  
14 jury, the Secret Service or an FBI agent; and

15 Fourth, the defendant did an affirmative act to conceal the crime.

16 *See* Pattern Crim. Jury. Instr. 10<sup>th</sup> Cir. 2.08 (2011).

17 **IV. FACTS SUPPORTING GUILTY PLEA**

18 A. The defendant will plead guilty because he is, in fact and under the law, guilty of  
19 the crimes charged.

20 B. The defendant acknowledges that if he elected to go to trial instead of pleading  
21 guilty, the United States could prove his guilt beyond a reasonable doubt. The defendant further  
22 acknowledges that his admissions and declarations of fact set forth below satisfy every element  
23 of the charged offenses.

24 C. The defendant waives any potential future claim that the facts he admitted in this  
25 Plea Agreement were insufficient to satisfy the elements of the charged offense.

1 D. The defendant admits and declares under penalty of perjury that the facts set forth  
2 below are true and correct:

3 1. On May 20, 2014, a Nevada Highway Trooper pulled over a car traveling  
4 South on I-215 near the Red Rock Hotel and Casino, for traveling 82 mph in a posted 65 mph  
5 zone. Defendant Melendez was the driver and sole occupant of the car. Defendant Melendez  
6 gave the Trooper verbal consent to search his car. The Trooper found a wallet containing a driver's  
7 license in the name of Jesennia Luna and approximately 600 plastic cards, more than 200 of which  
8 were determined at that time to be counterfeit re-encoded access devices, in an otherwise empty  
9 box for an MSR605, (a re-encoding device), on the rear of the passenger side floor board, along  
10 with paperwork containing the personal identifiers of other victims in the rear passenger side door  
11 panel. The Trooper also observed a wallet near where Defendant Melendez was standing, tossed  
12 over the small barrier wall. Defendant Melendez lied to the officer and denied knowing anything  
13 about the wallet on the ground. After retrieving the wallet, the Trooper located multiple cards,  
14 including a counterfeit credit card re-encoded with an Itau UnoBanco number X-0337, bearing  
15 the name of Jesennia Luna, a Red Rock Hotel and Casino valet ticket, and a Red Rock Hotel and  
16 Casino room key.

17 2. Telephonic state search warrants were obtained for the Red Rock Hotel  
18 room number 1110. A fully functional fraud lab was recovered from the room, including but not  
19 limited to, additional counterfeit access devices, a laptop computer, a thermal dye printer, and  
20 tipping foil. Further, approximately seven hundred forty two (742) plastic cards encoded with  
21 account numbers, including but not limited to MasterCard account number ending in X-5422 and  
22 Visa account number ending in X-7198, which had been used and attempted to be used to rent  
23 Red Rock Hotel and Casino, room number 1110, located at 11011 West Charleston, Las Vegas,  
24 Nevada; and electro-magnetic identifiers of credit card accounts issued to persons other than the  
25

1 person listed on the hotel registrar, in violation of Title 18, United States Code, Sections  
2 1029(a)(1), (b)(1), and (c)(1)(a)(i).

3           3. Defendant Melendez expressly admits that he knew there was a conspiracy  
4 to commit the felonies of Trafficking, Production and Use of Counterfeit Access Devices in  
5 violation of 18 U.S.C. §§ 1029(a)(1), (b)(1), and (c)(1)(a)(i), and Unlawful Possession of Device  
6 Making Equipment in violation of 18 U.S.C. § 1029(a)(4) and (c)(1)(a)(ii).

7           4. Defendant Melendez admits that he failed to notify authorities as soon as  
8 possible.

9           5. Defendant Melendez further admits that he affirmatively sought to conceal  
10 that criminal activity by discarding the wallet containing the “Jesennia Luna” identity, a room  
11 card, and the other cards, and by misleading the Trooper regarding the nature and source of the  
12 credit cards and other documents found in his car.

### 13 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**

14           The facts set forth in Section IV of this Plea Agreement shall be admissible against the  
15 defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any purpose. If the defendant does  
16 not plead guilty or withdraws his guilty plea, the facts set forth in Section IV of this Plea  
17 Agreement shall be admissible at any proceeding, including a trial, for impeaching or rebutting  
18 any evidence, argument or representation offered by or on the defendant's behalf. The defendant  
19 expressly waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 regarding the use  
20 of the facts set forth in Section IV of this Plea Agreement.

### 21 **VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS**

22           A. Discretionary Nature of Sentencing Guidelines. The defendant acknowledges that  
23 the Court must consider the United States Sentencing Guidelines (“USSG” or “Sentencing  
24 Guidelines”) in determining the defendant’s sentence.

B. Offense Level Calculations. The parties stipulate to the following calculation of the defendant's offense level under the Sentencing Guidelines, acknowledge that these stipulations bind the Court, and agree that they will not seek to apply any other specific offense characteristics, enhancements, departures or variances.

Underlying Offense: Counts One and Three

Base Offense Level (USSG § 2B1.1):	6
Enhancements:	
Loss between \$150,000 and \$250,000	+12
Access device fraud (USSG § 2B1.1(11)):	+2
Total Offense Level for Underlying Offense	18

Misprison Offense Calculation

Base Offense Level of Underlying Offense	18
Adjustments:	
Misprison Reduction (USSG § 2X2.1)	-9
Acceptance of Responsibility	-2
Total Adjusted Offense Level	7

C. Reduction of Offense Level for Acceptance of Responsibility. Under USSG §3E1.1(a), the United States will recommend that the defendant receive a two-level downward adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts establishing a factual basis for the guilty plea when he enters the plea; (b) provides false or misleading information to the United States, the Court, Pretrial Services, or the Probation Office; (c) denies involvement in the offense or provides conflicting statements regarding his involvement or falsely denies or frivolously contests conduct relevant to the offense; (d) attempts to withdraw his guilty plea; (e) commits or attempts to commit any crime.

D. Criminal History Category. The defendant acknowledges that the Court will base the sentence in part on the defendant's criminal record or criminal history. The Court will determine the defendant's Criminal History Category under the Sentencing Guidelines.

1 E. Relevant Conduct. The Court may consider any counts dismissed under this Plea  
2 Agreement and all other relevant conduct, whether charged or uncharged, in determining the  
3 applicable Sentencing Guidelines range and whether to depart from that range.

4 F. Additional Sentencing Information. The stipulated Sentencing Guidelines  
5 calculations are based on information now known to the parties. The parties may provide  
6 additional information to the United States Probation Office and the Court regarding the nature,  
7 scope, and extent of the defendant's criminal conduct and any aggravating or mitigating facts or  
8 circumstances. Good faith efforts to provide truthful information or to correct factual  
9 misstatements shall not be grounds for the defendant to withdraw his guilty plea.

10 The defendant acknowledges that the United States Probation Office may calculate the  
11 Sentencing Guidelines differently and may rely on additional information it obtains through its  
12 investigation. The defendant also acknowledges that the Court may rely on this and other  
13 additional information as it calculates the Sentencing Guidelines range and makes other  
14 sentencing determinations, and the Court's reliance on such information shall not be grounds for  
15 the defendant to withdraw his guilty plea.

## 16 VII. APPLICATION OF SENTENCING STATUTES

17 A. Maximum Penalty. Title 18, United States Code, Section 4 provides for a  
18 maximum penalty of imprisonment of not more than 3 years, and pursuant to 18 U.S.C. §  
19 3571(b)(3), a fine of not more than \$250,000, or both.

20 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors set forth in  
21 18 U.S.C. § 3553(a) in determining the defendant's sentence. However, the statutory maximum  
22 sentence and any statutory minimum sentence limit the Court's discretion in determining the  
23 defendant's sentence.

24 C. Parole Abolished. The defendant acknowledges that his prison sentence cannot  
25 be shortened by early release on parole because parole has been abolished.

1 D. Supervised Release. Pursuant to 18 U.S.C. § 3559(a)(3) and USSG § 5D1.2(a)(3),  
2 a term of supervised release of one year may be ordered.

3 E. Fine. Under the provisions of USSG § 5E1.2, a fine may be imposed, depending  
4 upon the Court's finding of the appropriate Offense Level within a range to be determined by the  
5 Offense Level within a range to be determined by the Guidelines. However, USSG § 5E1.2(e)  
6 allows the District Court to waive any fine, impose a lesser fine or an alternative sanction, such  
7 as community service, if the defendant establishes he does not have the ability to pay a fine and  
8 is not likely to become able to pay any fine.

9 F. Special Assessment. The defendant is required to pay a \$100.00 special  
10 assessment per count at the time of sentencing.

#### 11 **VIII. POSITIONS REGARDING SENTENCE**

12 The parties will jointly recommend a sentence of time served. The defendant  
13 acknowledges that the Court does not have to follow the recommendation of the parties.  
14 Notwithstanding its agreement, the United States reserves its right to defend any lawfully imposed  
15 sentence on appeal or in any post-conviction litigation.

16 The parties will jointly recommend that the Court impose a one-year period of supervised  
17 release.

18 The United States will recommend the Court not impose a fine.

19 The parties will not request and the Court will not impose a sentence outside the  
20 Sentencing Guidelines range as calculated in this Plea Agreement except as noted above, and will  
21 not seek any other departure or variance pursuant to 18 U.S.C. § 3553 or USSG § 4A1.3(b)(1) or  
22 any other Guidelines provision.

#### 23 **IX. RESTITUTION**

24 The parties agree restitution is not an issue in this case.  
25  
26



1 **X. FORFEITURE**

2 The parties agree forfeitures are not an issue in this case.

3 **XI. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS**

4 A. Plea Agreement and Decision to Plead Guilty. The defendant acknowledges that:

- 5 1. He has read this Plea Agreement and understands its terms and conditions;
- 6 2. He has had adequate time to discuss this case, the evidence, and this Plea
- 7 Agreement with his attorney;
- 8 3. He has discussed the terms of this Plea Agreement with his attorney;
- 9 4. The representations contained in this Plea Agreement are true and correct,
- 10 including the facts set forth in Section IV; and
- 11 5. He was not under the influence of any alcohol, drug, or medicine that
- 12 would impair his ability to understand the Agreement when he considered signing this Plea
- 13 Agreement and when he signed it.

14 The defendant understands that he alone decides whether to plead guilty or go to

15 trial, and acknowledges that he has decided to enter his guilty plea knowing of the charges brought

16 against him, his possible defenses, and the benefits and possible detriments of proceeding to trial.

17 The defendant also acknowledges that he decided to plead guilty voluntarily and that no one

18 coerced or threatened him to enter into this Plea Agreement.

19 B. Waiver of Appeal and Post-Conviction Proceedings. The defendant knowingly

20 and expressly waives: (a) the right to appeal any sentence imposed within or below the applicable

21 Guideline offense level as determined by the parties; (b) the right to appeal the manner in which

22 the Court determined that sentence on the grounds set forth in 18 U.S.C. § 3742; and (c) the right

23 to appeal any other aspect of the conviction under 28 U.S.C. § 1291 or sentence.

24 The defendant also knowingly and expressly waives all collateral challenges, including

25 any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the procedure by which the

1 Court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective  
2 assistance of counsel.

3 The defendant reserves only the right to appeal any portion of the sentence that is an  
4 upward departure from the Guidelines offense level as determined by the parties.

5 The defendant acknowledges that the United States is not obligated or required to preserve  
6 any evidence obtained in the investigation of this case.

7 C. Removal/Deportation Consequences. The defendant understands and  
8 acknowledges that if he is not a United States citizen, then it is highly probable that he will be  
9 permanently removed (deported) from the United States as a consequence of pleading guilty  
10 under the terms of this Plea Agreement. The defendant has also been advised if his conviction is  
11 for an offense described in 8 U.S.C. § 1101(a)(43), he will be deported and removed from the  
12 United States and will not be allowed to return to the United States at any time in the future. The  
13 defendant desires to plead guilty regardless of any immigration consequences that may result from  
14 his guilty plea, even if the consequence is automatic removal from the United States with no  
15 possibility of returning. The defendant acknowledges that he has specifically discussed these  
16 removal/deportation consequences with his attorney.


## 17 **XII. ADDITIONAL ACKNOWLEDGMENTS**

18 This Plea Agreement resulted from an arms-length negotiation in which both parties  
19 bargained for and received valuable benefits in exchange for valuable concessions. It constitutes  
20 the entire agreement negotiated and agreed to by the parties. No promises, agreements or  
21 conditions other than those set forth in this agreement have been made or implied by the  
22 defendant, the defendant's attorney, or the United States, and no additional promises,  
23  
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1 agreements or conditions shall have any force or effect unless set forth in writing and signed by  
2 all parties or confirmed on the record before the Court.

3  
4 DANIEL G. BOGDEN,  
United States Attorney


5  
6 12/8/14  
7 DATED

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9   
10 KATHRYN C. NEWMAN  
Assistant United States Attorney

11  
12 12/8/16  
13 DATED

14  
15   
16 EDWARD MARCOS MELENDEZ  
17 Defendant

18  
19 December 8, 2016  
20 DATED

21  
22   
23 WILLIAM CARRICO, AFPD  
24 Counsel for Defendant